

Need for revamping Stamp Act

By:

K. C. Jain

I. Preface:

The Indian Stamp Act, 1899 (in brief, "the Stamp Act") has been amended by the U.P. Legislature lastly in the year 2001. The Stamp Act, as it stands now, still suffers from several flaws. We welcome the step of the State Government to make new Stamp Law to replace the existing one.

II. Penalty Provisions-needs change

The U.P. Act No. 38 of 2001 amended Sec. 47-A of the Stamp Act by introducing penalty provisions for under-valued instruments. Such penalty can be "*of an amount not exceeding four times the amount of the proper duty or the deficient portion thereof*".

Such penalty, vide sub-sec. (4)(ii) of S. 47-A, is leviable, if the Collector finds "*the market value of the property not truly set forth and the instrument not duly stamped*". Thus, the *sine qua non* for levy of penalty is the finding of the Collector that the market value has not been "*truly set forth*" in the instrument.

The penalty provisions need reconsideration for several reasons thus:

- *Penalty should be for deliberately and willfully under-statement of market value and it should be specifically mentioned in the law.*
- Penalty proceedings are quasi-judicial in their nature and it is essential for the Revenue to first prove *mens rea* before penalty can be imposed. A finding that the person concerned has deliberately and willfully under-stated the amount of market value to evade stamp duty is essential.
- It has been found that penalty provisions are also being applied in a most mechanical manner without such consideration.
- Hence, it deserves to be clarified that a penalty is imposable in the event of *deliberate or willful evasion of stamp duty*.

Penalty under S. 47-A(4)(ii) is not interest

- The real character of the penalty under S. 47-A(4)(ii) is not interest. Reason being, sub-sec. (4-A) of Sec. 47-A is the specific provision of interest. Precisely speaking, since the Legislature has particularly enacted S. 47-A (4-A) for interest, the amount payable under S. 47-A (4) (ii) is to be treated as penalty and not interest.
- This, in turn, would make the principles of penalty jurisprudence applicable to the penal provisions of S. 47-A (4-A) of the Stamp Act.

Unbridled & unguided discretion to impose penalty

- Penalty provisions, i.e. Sec. 47-A(4)(ii) vests an unbridled & unguided discretion in the Collectors to impose 4 times of deficit stamp duty as penalty, which has been arbitrarily used by them in past, leading to litigations.
- The maximum amount of penalty is 4-times of the amount of the proper duty. But, under which fact-situation, the Collector is to levy four times of the deficit duty, is also not clear.
- Such provisions to levy penalty is causing harassment to the

property purchasers. For this purpose, it should be mentioned as under:

"Provided no penalty shall be levied unless it is established that there is deliberate and willful under-statement of market value in the instrument."

Quantum of penalty-

- The quantum of penalty should be specified and fixed by the Legislature itself. It would also avoid corruption. It should not be more than 1 time of the deficit Stamp Duty.

• ***Interest Provisions:***

Sub section (4-A) of Sec. 47-A, as noticed above, deals with payment of interest. This provision also became the part of the statute book in the year 2001.

Interest- rate be reduced:

But, what worries everybody is the high rate of interest. It is one and a half percent *per mensem*. When the banks pay only 9-10% interest p.a., why the Government be allowed to have 18% interest p.a.? Such rate of interest is excessive, unreasonable and arbitrary.

The Government should take its note. This provision requires to be changed to make it in the lines with the prevailing rate of the bank interest. It should not be more than 1% *per mensem*.

Interest is not penalty:

Interest is in addition to penalty. In other words, the Revenue is entitled to charge interest, besides levying penalty in suitable cases.

Hence, the interest payable is not in substance a penalty. The rate of interest should be reasonable, otherwise would be vulnerable to a challenge in the Courts of law.

In any view of the matter, it can not be said to be a sound and just Legislative policy to charge excessively high rate of interest. It should not be more 1% *per mensem*.

Time bound refunds with Interest:

It has been experienced that generally there are inordinate delays by the Collector in refunds. While the dues are recovered as 'arrears of land revenue' by adopting coercive methods, the Collector must make refunds expeditiously in a time-bound manner.

The Collector also charges interest on deficit stamp duty. But, there is conspicuous absence of a statutory provision for payment of interest when the amount deposited with the Collector is refunded back to give effect to an appellate/revisional order (passed u/s 56 of the Stamp Act) or order passed by the High Court or the Supreme Court..

This issue requires to be addressed to by the Legislature by providing interest on refundable amount @ 1% per month.

It is, therefore, suggested that following provision be inserted:

"If an amount paid as Stamp duty, interest or penalty in the proceedings under S. 47-A of the Act becomes liable for its refund consequent to the final orders in such proceedings, the Collector shall refund such amount within a period of 3 months from the date of the order achieving finality along with simple interest at the rate of one per centum per month from the date of its deposit to the date of its refund."

IV. Change in duty payable on 'agreement to sell'

Presently, the stamp duty on 'agreement to sell' is payable at the rate of 4 % of the agreed consideration. Earlier, it used to be only fixed duty of Rs. 100/-. Such duty is very high and needs to be reduced for the following reasons:

- (i) An agreement to sell does not create any '*interest*' in the property in view of S. 54 of the TP Act.
- (ii) Several times, an '*agreement to sell*' does not culminate in sale deed because of disputes between the sellers & purchasers, agreement becoming 'time barred'.
- (iii) The duty paid on '*agreement to sell*' is adjusted, when sale deed is executed. Thus, but on '*agreement to sell*' is not additional duty.

It would, hence, be better to have fixed non-adjustable duty, preferably Rs 5,000/-, where the agreed sale consideration is Rs. 2 lacs or more, and Rs. 1,000/- for the '*agreement to sell*', where the agreed consideration is less than Rs. 2 lacs.

V. Machinery for Determination of Market Value at Collector's level:

A plain reading of Sec. 47-A of the Stamp Act would show that it postulates the machinery for determination of market value. This exercise of determination is by the Collector.

It would go a long way if some other effective mechanism inspiring public confidence is evolved and innovated by the Government/Legislature. One of such suggested ways can be by entrusting the job of determination of market value under S. 47-A of the Stamp Act to a *Tribunal/penal* which may consist of the Collector/Addl. Collector, a Judicial Officer and a valuation expert (who can be a Chartered Engineer). The need for such *penal* is also felt as the Collector is generally a *non-technical person*, having no expertise in the field of valuation of immovable properties.

VI. Fixation of Minimum Values u/s. 47-A(1)(a):

Under the provisions of S. 47-A(1)(a) of the Stamp Act, as amended in U.P., the Collector is empowered to fix *minimum value*.

But, no procedure / guidelines / factors to be taken into consideration for fixing "*minimum value*" have not been specified. Often, Collectors determine these "*minimum value*" with subjectivity instead on objective material. It leads to insurmountable difficulties.

Clear & specific guidelines for fixation of "minimum value"

It would be proper that for determination of "*minimum value*", let the adequate safeguards by providing clear, specific and binding guidelines (which should be in consonance with the law / principles relating to valuation of properties) be made an integral part of the scheme of fixation of "*minimum value*" under the Stamp Act.

VII. "Minimum value" to be binding on Collector"

It would be proper and fair that the "*minimum values*" fixed by the Collector should bind him in the proceeding for determination of 'market value' in '*Reference proceedings*' under s. 47-A of the Act. Otherwise, it is glaringly anomalous for the Collector to himself fixing values and later on to say that they are not true values.

Since such rates are fixed *ex parte* by the Collector, it is needless to say that they do not bind the purchasers, as has settled time and again by the Judiciary.

VIII. 'Inspection' for making reference under S. 47-A:

For the purposes of initiating proceedings under S. 47-A of the Act, inspections of demised properties are generally made. Such inspections should be made not beyond 6 months from the date of transfer for the reasons as follows:

- (i) The playability of stamp is to be decided with reference to the date of execution of the instrument, and not to any subsequent

date. Hence, it requires an earliest inspection.

- (ii) Constructions / developments are carried out subsequent to purchase. Hence, delayed inspections and reference proceedings pursuant thereto have no legal relevance.

IX. Stay of Recovery of disputed amount:

A right to appeal against the order of the Collector has been given to a person in Sub Sec. (1-A) to S. 56 of the Stamp Act, which was added in year 2001.

However, for grant of stay of recovery of any disputed amount of Stamp Duty (including interest thereon or penalty) is subject to a condition that the applicant is to pay "not less than one third of such disputed amount". Such statutory provision has, thus, *circumscribed* and *limited* the right to get a stay, which in many circumstances, may cause great hardship.

For instance, even to get a stay order against an *ex parte* order of the Collector, where huge amount of penalty (which may be up to 4 times of the alleged deficient Stamp Duty) has been levied, one would be required to deposit 1/3rd of the disputed amount which may be *too onerous* for an appellant.

Significantly, the appellant authority i.e. the Chief Controlling Revenue Authority has not been vested with a right to 'relax' the condition of one-third deposit even in suitable cases. If we glance over other laws, we find that such power to relax the condition of deposit either partially or completely has been given to the appellate authority by the Legislature which is wanting lacking in the first proviso to Sub S. (1-A) of S. 56 of the Act.

The aforesaid first proviso needs a change to empower the Chief Controlling Revenue Authority (CCRA) to relax, in suitable cases, the condition of one-third deposit for getting a stay of the recovery of disputed amount.

What is in fact needed is the expeditious disposal of appeals, so that one may finally know his liability and the State may also get what is legally recoverable by it as Stamp Duty / penalty / interest. It can not be gainsaid that the entire emphasis should be to ensure quicker disposal of appeals rather than collecting 1/3rd of the disputed amount.

Time limit for initiation of stamp proceedings after registration of documents:

S. 47-A of the Act, at present, permits initiation of stamp deficiency proceedings up to 8 years. This time limit should be reduced to six years for the reasons thus:

- (i) It causes great hardship to subsequent purchasers, if proceedings of deficit stamp duty are initiated in respect of earlier transactions in respect of the property.
- (ii) Too long a limitation for ascertaining deficiency of a past transaction is *not conducive for tax administration* & not a part of sound tax policy.
- (iii) In Income-tax Act also, such limitation has been reduced from 8 years to 6 years.

XI. Lease provisions need much change:

- (i) *Leases not exceeding 30 years:*

The present provisions of the Stamp Act for leases less than 30 years need to be altered as they require much heavier payment of duty. They need to rationalize and duty reduced.

- (ii) *Leases exceeding 30 years:*

A lease is also different than a conveyance. Vide Section 2(10) of the Stamps Act, "Conveyance includes a conveyance on sale."

Sale is defined in S. 54 of the TP Act. The stamp duty on conveyance is contemplated in Article 23 of the Schedule 1-B of the Stamps Act, while lease transactions are mainly mentioned in Article 35.

Article 35 covers instruments which fall within the definition of "Lease, including an under-lease or sub-lease and any agreement to let or sub-let". The term- 'sub lease', as defined in the Blacks Law Dictionary means: "Sub-lease, or under lease"-One executed by the lessee to a third person, conveying the same estate for a shorter term than that for which the lessee holds it."

According to the present provisions of Article 35, where a lease purports to be for a term exceeding 30 years, the stamp duty is the same as for a 'conveyance' for a consideration equal to the 'market value', of the subject of the lease.

The above provision cannot be said to be reasonable as a transaction of lease cannot be equated with a sale. A lessee can not enjoy rights and privileges equal to a freehold purchaser. A legal provision requiring a lessee to pay as for a 'conveyance' is arbitrary and unreasonable.

In the prevalent economic scenario of liberalization, lease transactions are also substantially increasing. It is, hence, high time that a serious thought is given to suitably revamp the lease provisions of the Stamp Act and a sincere effort is made to remove the anomalies in regard thereto.

XII. Minimum value of 'Commercial' properties be fixed in new law

S. 3 read with Article 23 of Schedule 1-B of Stamp Act creates a charge of Stamp duty (which is a tax) on market value. Any Rule made under the Act, if results in an amount more than 'market value', is bad being *ultra vires* of the Act.

Rule 5 (c) (ii) of the 1997 Valuation Rules lays down for fixation of 'minimum value' of 'commercial' properties by saying it to be 300 times of monthly rent (being 25 times of annual rent).

Said Rule runs contra to the legislative mandate by laying down a formula for working out the amount that results in exorbitantly high 'market value'.

The issue of proper multiplier has been repeatedly considered by the Courts. The Apex Court has categorically ruled in numerous verdicts that for 'income/rent capitalization method', the multiplier of 8-1/3 to 12 times of annual income / rent is proper.

Further, such annual income/rent should be 'net' and not 'gross'. The "net rent" and not "gross rent" should form basis for rent capitalization method and the Rule framed to the contrary is illegal. Rule 5 (c) (ii) arbitrarily ignores the various outgoings (such as annual maintenance and repairs, collection charges and municipal taxes etc.).

A 'rule making authority' cannot travel beyond the scope of enabling provision of law. Such 'power of rule-making' is also limited in its terms and subordinate to the object. A rule should be subordinate to and be reasonably related to the purpose / object of the enabling provision.

Hence, it is suggested that in the new Stamp law, a formula to work out 'minimum value' of a commercial property is specified in the Act itself to avoid unnecessary controversies. For this purpose, the multiplier of annual maintainable income / rent (i.e. net rent & not gross rent) should not exceed 8-1/3 to 12 times to fix 'minimum value' of 'commercial properties'.

XIII. Duty on Builder's agreement be reduced

Article 5 of Sch I-B of the Stamp Act was amended vide UP

Act No. 22 of 1998 (w.e.f. 1.9.1998), and clause (b-2) was added. It requires payment of Stamp Duty on Builder's Agreement and such duty is equivalent to 'conveyance' for a consideration equal to the amount or value of the land.

It is submitted that the above duty is excessive. In Builder's Agreement, title of land or property constructed thereupon does not get transferred. Hence, to require payment of duty equivalent to 'conveyance' is not reasonable. In other States, no such duty is payable on Builder's agreements.

It needs to be reduced. Needless to point out that excessive duty causes 'evasions', and people find various way, e.g. just writing 'agreement to sell' or power of attorney in other adjoining States.

At best, the above duty should be 1/4th of that of conveyance.

XIV. Power to call for information

A new provision, namely, Section 73-A of the Indian Stamp Act, 1899 was added by the U.P. Act No. 6 of 1980, which empowered the Collector or any other officer authorized by him in writing to *enter upon the premises* with a view to find out any material pertaining to an under stamped instrument.

The power under S. 73A is, infact, an invasion on "*Right to Privacy*" and the powers exercisable thereunder are also subject to judicial review. The public policy requires that such powers should be sparingly used.

It would, hence, be proper that instead of resorting to the powers under S. 73A, the Collector or any other officer authorised by him should be given a power to call for information at parity with similar provisions of various other fiscal enactments. It is suggested that a new S. 73-B can be added to the Stamp Act as follows:

“Power to call for information.--

73-B (1) Where the Collector has reason to believe that any instrument chargeable to duty has not been charged at all or has been incorrectly charged with duty leviable under this Act, he or any other officer authorised by him in writing in this behalf (to be called the authorised officer) may require any person to produce before him or the authorised officer any such instrument or any other relevant record pertaining thereto, including registers, books, records, papers, maps, documents or proceedings relating thereto.

Explanation – The expression 'any person' in this section would include therein a body of individuals, any statutory authority or association, whether incorporated or not.

(2) If any person, on being required under sub-section (1) by the Collector or the authorised officer, fails to produce the required instrument or record without any sufficient cause, the Collector may direct such person to pay, by way of penalty, a sum not exceeding Rupees Five Thousand.

Provided no such order under this sub-section shall be passed by the Collector unless the person on whom such penalty is proposed to be imposed is given an adequate opportunity of being heard in the matter.

Provided further the order passed under this sub-section shall be subject to an appeal to the Chief Controlling Revenue Authority, who shall, after giving the appellant a reasonable opportunity of being heard, pass such order thereon as he things just and proper and the order so passed shall be final."

XV. Conclusion

The aspects, considered above, are only some of the relevant issues, which require to be addressed to. A note on some other issues would be submitted shortly.

It cannot be gainsaid that in a democratic State like ours, the Government as well as the Legislature need to be conscious about public grievances & hardships and they should also endeavour for their redressal. Laws, for that purpose, should be suitably modified to meet public aspirations and to ensure their maximum compliance.

Therefore, the Stamp Act should be revamped *after a thorough debate and discussions* with stakeholders and all concerned.
